



## **PUBLIC SERVICE COMMISSION**

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**Bob Rowe, Chairman**

October 30, 2003

Hon. Alan Olson  
Chairman, Energy and Telecommunications Interim Committee

Re: Participation in the NorthWestern bankruptcy

Dear Chairman Olson,

Thank you for your letter on behalf of the Energy and Telecommunications Interim Committee, dated September 26, concerning participation in the NorthWestern bankruptcy. I am responding on behalf of the Public Service Commission.

I agree with you concerning the Committee's important role. I very much look forward to your next meeting, including the time you intend to devote to the bankruptcy. Before responding to your four specific questions, I will provide some background.

As you know, beginning last January the PSC took a series of steps concerned with various aspects of NorthWestern's deteriorating financial condition. These culminated with the opening in August of the PSC's financial investigation, Docket D2003.8.109, commenced by a Montana Consumer Counsel petition. Additionally, we began researching utility bankruptcy, scoping issues, and generally laying the groundwork in the event a bankruptcy petition was filed.

Over the summer, we undertook a series of meetings with the Governor's office, the Attorney General, and the Consumer Counsel. Through our discussions and analysis, we mutually agreed that separate interventions were most appropriate, and would be most consistent with requirements of legal ethics that conflicts of interest be minimized and avoided where possible. The Attorney General will represent the Governor and the Executive Agencies in one intervention, which will concern the state agencies with potential claims against NorthWestern. They will describe their position in a separate response to your letter.

The Public Service Commission's intervention is focused on ensuring a financially healthy, utility-centered company emerges from bankruptcy as well as other issues directly associated with the provision of adequate and affordable utility service to Montana customers. For ethical reasons, the PSC and Consumer Counsel are using separate counsel. However, we are coordinating as closely as possible with Consumer Counsel, sharing work, and intend to retain one financial expert, to be used by both agencies.

The remainder of this letter responds to your questions in more detail. Supporting documents are identified and attached.

**A. Who will participate in the bankruptcy? What interests will be represented?**

The PSC is participating in the bankruptcy proceeding. The PSC represents the public interest and, as stated above, is concerned with the bankruptcy issues associated with the assurance of the provision of adequate and affordable service to Montana customers.

**B. In what capacity will the PSC participate?**

The PSC is a party in interest in the proceeding. The relationship between utility regulation and bankruptcy law is complex, with many points of intersection. Bankruptcy jurisprudence recognizes the unique role of public service commissions in utility bankruptcies. Public service commissions have ongoing jurisdiction over the bankrupt's rates and other matters. The eventual reorganization plan will drive rates which must be reviewed and approved by the regulator before the plan can be confirmed.

**C. What is the estimated cost of participating? What part of the cost exceeds each agency's appropriation?**

The PSC has determined it needs \$250,000 through June 2004 to pay for outside legal counsel and \$900,000 through June 2004 to pay for a financial advisor, for a total of \$1.15 million. The maximum amount available in the PSC's current budget to fund our bankruptcy participation is \$101,000. Of that amount, \$53,000 is the PSC's biennial consultant budget (and, unless we obtain the full funding we seek, we will spend that to contract with outside legal counsel on a very limited basis for this bankruptcy), and \$48,000 is a carry forward from the 2003 fiscal year. The \$48,000 should be reserved for vacancy savings and other general agency needs and exigencies that may arise in the biennium. These amounts are far short of what is needed to fund effective PSC participation.

I attach two recent letters that explain in detail the PSC's estimated costs of participation in the proceeding, how those costs were developed, why outside legal and financial advisors with bankruptcy experience are necessary in order to participate effectively in this proceeding, and our so-far unsuccessful attempts to obtain funding through the bankruptcy estate and through the state: (1) the October 17, 2003 letter from me to Budget Director Chuck Swysgood, and (2) the October 28, 2003 letter from me to Governor Judy Martz.

**D. What plans do we have to coordinate in order to maximize efficiency and minimize counterproductive efforts?**

**Hon. Alan Olson**

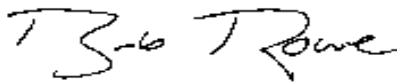
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As indicated above, the PSC and Consumer Counsel are closely coordinating our efforts in this proceeding. Our attorneys and our separate outside legal counsel work together as much as possible. Our two agencies have agreed to share one financial expert should funding be available. In addition, the Consumer Counsel and I have met with representatives of the Governor's office and the Attorney General to discuss our participation and objectives. As much as possible, I hope to continue coordinating our efforts.

Important developments in the bankruptcy are occurring nearly every day. Please let me know if I may provide any further information. I look forward to the Committee's upcoming meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Rowe". The signature is written in a cursive, slightly stylized font.

Bob Rowe

Attachments

Copies: Members of the committee, etc.